

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311	
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF DAVIS, CALIFORNIA

These Comments are filed by the City of Davis in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Davis believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a Franchise Agreement. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The City of Davis is municipal government with a population of 64,533. Our franchised cable provider is Comcast of California, Inc. Our community has negotiated cable franchises since 1978.

Our Current Franchise

Our current franchise began on October 1, 2005 and expires on September 30, 2018. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the

franchise in which to request a renewal under the Federal Act. As a result, at this time we not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City of Davis in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 2 channels devoted to government access. Within 2 years, the cable company will also provide one additional channel for educational access and upon digital conversion of the local cable system three additional channels will be added for public, education and government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

- Upfront capital and equipment grants totaling \$575,000
- Per subscriber charges of \$.85 per month, totaling approximately \$110,000 per year in the City of Davis.

Our franchise contains the following institutional network ("I-Net") requirements:

- An institutional network is connected to 39 local government and educational buildings.

We use our I-Net facilities in the following ways:

- to provide police or firefighter remote training
- to enhance of classroom education between school sites
- to provide in-depth interactive information with Davis residents
- High-speed transmission of government data to and from City departments, qualified I-Net users, and to and from other organizations and the public;
- Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from schools and to and from other organizations and the public;
- Providing videoconferencing among municipal and educational locations and to other locations for municipal and educational purposes;
- Linking libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;

- Providing for remote origination of video programming for PEG programming; and
- Facilitating connections for internal telephone systems, security systems and critical public entity communications applications.

Our franchise contains the following requirements regarding emergency alerts:

- Grantee and City shall comply with all FCC rules and regulations relating to the national Emergency Alert System (EAS) or any successor system thereto and the California Emergency Alert System Plan where applicable.
- The City also agrees to follow the California Emergency Alert System Plan.
- Local officials have access to the alert system in an emergency

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: Recent brush fires forced closure of a local highway and the access to the emergency alert system announced this closure to local residents. The government access channel was also used for announcements.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

- Enforcement of FCC customer service standards, customer notification requirements,
- Standards for customer service operators local office and/or after hours drop-off/bill pay services,
- Installation and service call standards,
- Customer complaint procedures
- Maintenance of public files
- Standards for legibility of materials
- Provision of prorated credits for service interruptions

Our original franchise contained the following reasonable build schedule for the cable operator:

- Phased-in build-out to its franchised service area
- Build-out in new areas with six months of construction of the subdivisions

Our franchise requires that the cable operator currently provide service to the following areas of our community:

- Within the Franchise Area Grantee shall extend its trunk and distribution system to serve Customers requesting service where the

density of dwelling units passed by such extension is equal to or greater than forty (40) dwelling units per cable mile in areas passed by overhead cable or sixty (60) households per cable mile in areas passed by underground cable.

- In areas with less than forty (40) dwelling units per cable mile aerial or sixty (60) dwelling units per cable mile underground, service shall be offered in conformance with Grantee's line extension policies. Grantee shall not be required to extend its trunk and distribution system where the area is already served by another Cable System provider.
- Grantee's maximum standard length for a service drop is one hundred twenty-five (125) aerial feet, and any distance beyond that length Grantee may charge its non-standard installation fee. For underground drops, which require Grantee to cut pavement curbs, sidewalk, or similar "hardscape" surfaces, and for that incremental portion of all drops greater than one hundred twenty-five (125) feet, Grantee may charge its non-standard installation fee. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

- System was rebuilt in the 2004
- System provides cable modem service to the same set of residents which receive cable video services.

Our franchise contains a "Level Playing Field" provision which states the following:

- The Franchise granted to Grantee may not be construed to limit in any manner the right of City, through its authorized officers and in accordance with applicable law, to lawfully issue franchises to operate Cable Systems within the City to other individuals or entities; and any additional grants will not operate to revoke, terminate, or materially and adversely affect any rights granted to Grantee by this Franchise.
- The City shall comply with Government Code Section 53066.3. It is the City's intent to grant franchises to another individual or entity to provide Cable Services on material terms and conditions that are no more favorable or less burdensome than the terms and conditions

applicable to Grantee and do not place Grantee at a competitive disadvantage under this Franchise.

- In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall promptly serve or cause to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.
- In the event an entity begins providing video programming or cable services in Davis using the public right-of-way without a franchise from the City, at the Grantee's request the City and the Grantee shall meet and confer to discuss the impact of the competition on the existing franchise. As a result of the meet and confer process, and subsequent to a public hearing on the matter, the City Council shall determine whether to suspend any provision(s) of this agreement temporarily or permanently to provide a level playing field and to meet community needs using local cable resources. Temporary or permanent suspension of any provision of this agreement would not constitute a reopening of the entire Agreement. No temporary or permanent suspension of any provision in this Agreement will be retroactive. The City shall not be liable to reimburse any previous payments from the Grantee or provision of service by the Grantee related to the suspended provision. The City agrees to respond to a meet and confer notice within ten (10) business days. The City and the Grantee agree to complete the meet and confer process within twenty (20) business days. The City agrees to present meet and confer recommendations to the City Council within thirty (30) days from the conclusion of the meet and confer process, unless the meet and confer process concludes near the City Council recess in August or during the traditional winter holidays in December.

- If the Grantee is dissatisfied with the decision of the City Council, the City and the Grantee agree to continue the meet and confer process until mutually satisfactory provisions are approved by the City Council. In the event that mutually satisfactory terms are not reached, either party can submit the issues in controversy to non-binding mediation. The City and Grantee will mutually select the mediator and the parties will share the cost of the mediator equally. The City and the Grantee acknowledge that the mediator may recommend:

1. Acceptance of the proposed terms and provisions of the parties

2. Initiation of the Section 626 process of the Federal Cable Act.
3. Adjustment of the existing franchise provisions to mirror the provisions under which the non-City franchised wireline entities are operating within the city.

Notwithstanding any provision to the contrary, the City and the Grantee reserve any and all rights provided by law or in equity.

Our franchise contains the following insurance and bonding requirements:

- that the cable company obtain insurance with the following limits: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one (1) occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one (1) accident.
- That the cable company provide a performance bond in the amount of Two Hundred Thousand Dollars (\$200,000.00) to ensure the faithful performance of its responsibilities under our Franchise.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

- The city can seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief
- The city can secure liquidated damages for breach occurring prior to the date of the hearing should Grantee fail to cure the violation as provided in Section 13.2 but not until after notice is provided to the Grantee. Such liquidated damages shall not exceed a total of \$50.00 per day and not to exceed a total of \$50,000.00.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the

franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

- Our Franchise shall be deemed to be executed in the State of California, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of California, as applicable to contracts entered into and performed entirely within the State.
- No provision of our Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance:

- Our franchise provides due process in excess of that required by the state of California. In the case of default in the agreement, the City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
- At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and witnesses and cross-examine witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and, at either party's request, a

written transcript shall be made. The cost of the stenographer and written transcript shall be borne by the party requesting the transcript or, if both parties desire a transcript the cost shall be split between the parties. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require.

Competitive Cable Systems

Our community has

- been approached by a competitive provider to provide service who expressed interest in providing competitive service in the future but has not pursued this interest.
- has actively sought out competitive providers, but has not been successful.
- has not denied any provider the opportunity to serve in our community.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the city of Davis. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as

PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Davis therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

By: RUA/as
Ruth Uy Asmundson
Mayor
City of Davis
23 Russell Blvd.
Davis, CA 95616

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov

RESOLUTION NO. SERIES 2006

**SUPPORTING LOCAL AUTHORITY TO DETERMINE USE OF
RIGHT-OF-WAY FOR CABLE-RELATED SERVICES**

WHEREAS, the City of Davis has granted cable-related franchises in Davis, California since 1978; and

WHEREAS, cable franchises have been renewed successfully and informally on three occasions in Davis; and

WHEREAS, the City of Davis has worked cooperatively to grant franchises to any and all interested competitors; and

WHEREAS, the City of Davis has agreed to ordinance and franchise agreement language providing for a level playing field for all entities seeking to provide cable-related services; and

WHEREAS, the City of Davis seeks cable services which provide competitive rates and services to Davis residents in balance with the provision of cable-related needs and services;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council:

1. Opposes federal and state rules limiting the authority of Local Franchise Authorities (LFAs) to determine the use of local rights-of-way.
2. Opposes limits to the authority of LFAs to seek and receive fair compensation for the use of local rights-of way for for-profit services.
3. Supports the exercise of local authority to negotiate franchises that seek to meet locally-defined, cable-related needs and interests.

Approved and adopted on the 7th day of February, 2006.

BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

RUA/as
Ruth Uy Asmundson, Mayor

ATTEST:

MR/as
Margaret Roberts, City Clerk

